

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EON-NET L.P.,

Plaintiff,

v.

FLAGSTAR BANCORP,

Defendant.

CASE NO. C05-2129RSM

ORDER ON MOTION FOR STAY OF
JUDGMENT

On May 17, 2010, the Court directed the Clerk to enter judgment in favor of defendant in the amount of \$631,135.18, representing the amount of Rule 11 sanctions and attorneys' fees pursuant to 35 U.S.C. § 285 due defendants. The judgment has not yet been entered. Plaintiff has moved for a stay of judgment, citing Local Rule CR 7(d)(2)(A), which applies to motions for relief from deadline, not a stay. Plaintiff asks for a stay of judgment pending appeal, arguing that it is very likely that this Court's Orders will be overturned on appeal, and also that plaintiff's counsel will be irreparably harmed because he does not have the funds to pay the judgment or post a bond. Dkt. # 196. The bulk of plaintiff's motion amounts to a motion for reconsideration, re-arguing matters that have already been decided adversely to plaintiff.

In opposing the motion, defendant correctly asserts that plaintiff has relied on the wrong legal

ORDER ON MOTION FOR STAY OF
JUDGMENT - 1

1 standard for requesting a stay of judgment, and the motion should have been brought as a request for
2 stay by supersedeas bond, pursuant to F.R.Civ.P. 62(d). Defendant also argues that plaintiff has not
3 made a showing of irreparable harm, as no evidence was offered to support that claim.

4 In responding to the irreparable harm argument, plaintiff filed a reply declaration of counsel,
5 stating in full that;

6 I, Jean-Marc Zimmerman, declare as follows:

7 1. I am an attorney-at-law licensed in the State of New Jersey and am counsel for Eon-Net, L.P.
8 in the above-entitled action.

9 2. I do not have the funds to pay the sanctions amount or to pay for a bond.

10 3. The Sanctions and Monetary Orders have already harmed me by costing [sic] me to lose
11 business. Further, they have been cited by adversaries in non-Eon-Net cases to try and harm
me and my client.

12 I declare under the laws of the United States that the foregoing is true and correct.

13 Dkt. # 198-2. The declaration is signed by counsel but is unsworn.¹ It is also not accompanied by any
14 documentary evidence. The Court finds the declaration not credible with respect to counsel's alleged
15 poverty. Counsel filed this action as a partner in the firm of Zimmerman, Levi, and Korsinsky, LLP,
16 and litigated it as a member of the firm. On December 23, 2009, after defendant's motion for attorneys'
17 fees was fully briefed but before the Court ruled, counsel filed a "Notice of Name Change." Dkt. # 186.
18 The Notice advised the Court and opposing party that his firm name had changed to Zimmerman &
19 Levi, LLP, but did not state when the change occurred. Counsel continues to use an e-mail address from
20 his former firm (jmzimmerman@zlk.com) and has signed orders in other cases with the Zimmerman,
21 Levi & Korsinsky LLP signature subsequent to the date of the "name change". See, *Glory Licensing*
22 *LLC v. Best Buy Co., Inc.*, Cause No. 2:09-cv-04858-WJM-MF, Dkt. # 11 (D.N.J., February 10, 1010).
23 The three-partner firm name appears on the docket of another case filed in the New Jersey District Court
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26 ¹Counsel was advised in a previous Order that such a declaration is insufficient to meet the
requirements of 28 U.S.C. § 1746 because it lacks the requisite "under penalty of perjury" language.
Dkt. # 195, p. 9.

1 as recently as June 11, 2010. *Millennium, L.P. v. Digitech Systems, Inc.*, Cause No. 1:10-cv-04595-
2 PAC. These facts raise serious questions regarding counsel's status as a member of the firm.

3 Plaintiff's Local Rule CR 7(d)(2)(A) motion for a stay pending appeal is accordingly DENIED,
4 without prejudice to renewal as a motion for stay by supersedeas bond.

5 The Clerk shall forthwith enter judgment in favor of defendant in the amount of \$631,135.18 in
6 accordance with the Supplemental Order on Motion for Fees and Costs, Dkt. # 195.

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8 Dated this 21 day of June 2010.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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